

TO: The Hon. Mark Langer, Clerk of Court
U.S. Court of Appeals—District of Columbia
E. Barrett Prettyman U.S. Courthouse and
William B. Bryant Annex
333 Constitution Avenue, Northwest
Washington, D.C., 20001

UNITED STATES COURT OF APPEALS
FOR DISTRICT OF COLUMBIA CIRCUIT

MAY 23 2024

RECEIVED

FROM: Patrick L. Booker
103 Rock Knoll Drive
Greenwood, S.C., 29649

DATE: May 20, 2024

RE: Brian Firebaugh et al. v. Garland, Case No. 24-1130

Dear Clerk:

Enclosed for filing, please find the original, and a copy of the first page of the Motion to Intervene along with the appropriate certificate of service.

Please return to me (in the S.A.S.E enclosed for your convenience) a clocked copy of the filing of this matter for my records.

Cordially,

Patrick L. Booker

w/enclosures

CC: My File

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

BRIAN FIREBAUGH, ET AL.,)
Petitioners,)
v.) No. 24-1130
)
MERRICK B. GARLAND, in his)
capacity as United States Attorney)
General Respondent.)

)

**MOTION TO INTERVENE
ON BEHALF OF THE 70 MILLION
AMERICAN *TIKTOK* USERS
UNLAWFULLY SHADOW BANNED BY *TIKTOK*'S
INVIDIOUS DISCRIMINATION AGAINST CERTAIN
AMERICAN *TIKTOK* USERS**

COMES NOW the Honorable Patrick L. Booker, *U.S. Advocate of Justice and Legal Strategist*, hereby move this Court for permission to intervene in this matter as a petitioner for the purpose of seeking a declaration of rights and for the purpose of appearing as *next of friend* to the nearly seventy-million American TikTok users who are being, and who have been, subjected to an *unjust* TikTok shadow ban, in

order that it may be known to this Court (and the Supreme Court) and by the general American public (especially by those American citizens and the 1 billion global TikTok users closely following this matter) that TikTok Inc. and ByteDance Ltd.¹ lacks standing, under the “**unclean hands doctrine**”,² to assert (and indeed has some nerve to assert)—in their Petition to this Court---a First Amendment right on behalf of itself and its TikTok users when and where TikTok Inc. and ByteDance Ltd. *themselves* have violated, and is currently violating, the very same First Amendment rights of nearly seventy (70) million unjustly “**shadow banned**”³ American TikTok users.⁴

¹ References to “TikTok Inc.” are to the specific U.S. corporate entity that publishes the TikTok platform in the United States. References to “TikTok” are to the online platform, which includes both the TikTok mobile application and web browser experience. References to “ByteDance Ltd.” are to the specific Cayman Islands incorporated holding company that is identified in the Act. References to “ByteDance” are to the ByteDance group, inclusive of ByteDance Ltd. and relevant operating subsidiaries.

² The doctrine of unclean hands, often referred to as the “dirty hands doctrine” or the “unclean hand's doctrine,” is a **legal code that allows a court to refuse to hear a case if the party bringing the case has committed a wrongful act.**

The unclean hands defense can be used to protect the rights of businesses, consumers, and the court system's honor and integrity.

A defense of unclean hands can be used in any legal proceeding. It is an essential part of the legal system and it is designed to protect the legal system's integrity and prevent a party from using the courts to gain an unfair advantage over another.

³ TikTok shadow ban is when TikTok limits the visibility of your account for a period. During this time, your videos won't show up on the “For You” page or in hashtag searches. Some people who experience a shadow ban often notice that their posts are harder to find, and they get fewer likes and comments than usual.

<https://megadigital.ai/en/blog/tiktok-shadowban/#:~:text=TikTok%20shadowban%20is%20when%20TikTok,likes%20and%20comments%20than%20usual>.

⁴ It should be noted that TikTok Inc. previously issued an apology for its invidious discrimination against its Black TikTok Creators. See <https://newsroom.tiktok.com/en-us/a-message-to-our-black-community> : <https://www.nbcnews.com/news/us-news/tiktok-algorithm-prevents-user-declaring-support-black-lives-matter-n1273413>. Yet there are still persistent complaints that little has changed since TikTok's apology. See, <https://www.nbcnews.com/pop-culture/pop-culture-news/months-after-tiktok-apologized-black-creators-many>

Social media allows information to be shared along social networks with friends or followers (*who may then share items in turn*), and they enable discussion to take place around such shared information. Users of such sites do more than just passively consume information, in other words: they can also create it, comment on it, share it, discuss it, and even modify it. The result is a shared social environment and a sense of membership in a distributed community.

Social media thus comprise four groups of people: users who generate content, users who consume content, users who generate commercial speech (advertising), and social media managers who host speech. Each element involves speech: users generate and consume information, and social media services create the forum in which speech happens. *Individual speech is highly protected in the United States.* Indeed, *the United States highly values individual speech in the public sphere.*

Although TikTok Inc. and ByteDance Ltd. are a private forum, the Supreme Court has long recognized this principle of law:

“The more an owner, for his advantage, opens up his property for use by the public in general, the more do his rights become circumscribed by the statutory and constitutional rights of those who use it.” *Marsh v. Alabama*, 326 U.S. 501 (1946), 506, 509.

[say-little-has-n1256726](#); <https://newsroom.tiktok.com/en-us/progress-report-how-were-supporting-black-communities-and-promoting-diversity-and-inclusion>

As noted in TIKTOK's petition, "TikTok is an online video entertainment platform designed to provide a creative and entertaining forum for users to express themselves and make connections with others over the Internet. **More than 170 million Americans use TikTok every month**, to learn about and share information on a range of topics — from entertainment, to religion, to politics. Content creators use the TikTok platform to express their opinions, discuss their political views, support their preferred political candidates, and speak out on today's many pressing issues, all to a global audience of **more than 1 billion users.**" (see, *TIKTOK INC. v. GARLAND*, 24-1113 at Doc. No. 2053212 at 8)

The fact that TitTok Inc. and ByteDance Ltd. opened their private property for use by the public in general, inviting **more than 170 million Americans (1 billion users globally)** to use their platform, is not only substantial, *but also consequential.*⁵

1. On September 19th, 2020, the 38th day after having been released from prison after serving more than eighteen (18) years of wrongful imprisonment/unlawful confinement, I joined the TikTok platform and began posting both entertaining and informative content to my TikTok

⁵ I am confident that either this Court or the Supreme Court may agree with me that, by opening up their private companies and in inviting more than 170 million Americans to use their property, the petitioners themselves created a **public accommodation** subject to all American laws pertaining thereto. <https://www.findlaw.com/civilrights/civil-rights-overview/public-accommodations-equal-rights.html#:~:text=Churches%2C%20synagogues%2C%20mosques%2C%20and,during%20that%20period%20of%20use>.

account which I established using the pseudonym *KevinPresident2020* (currently *KevinPresident2024*)⁶.

Initially, I was really excited to join TikTok and share my content with the world. It was a fun platform where I could connect with others and express myself creatively. In fact, I acquired an agenda after joining TikTok---*to speak out on today's many pressing issues including politics*⁷, *and to announce my decision to run for president of the new United States*, using TikTok's broad audience to amass millions of followers (i.e., potential VOTERS) *as my own unique way* to build a census on many national issues that I know are affecting Americans.

2. On May 22, 2022, I posted a video to my TikTok account titled “School is now in session” which depicts me, a black man, educating a white man on pertinent details of history of the U.S. Civil War which went viral and became trending, resulting in 53K views and prompting over 8,400 comments on TikTok.

See,

https://www.tiktok.com/@kevinpresident2024/video/7100712535166537006?is_from_webapp=1&sender_device=pc&web_id=7359608146652022315

⁶ My TikTok handle is **KevinPresident2024**. See, <https://www.tiktok.com/@kevinpresident2024>

⁷ There is a very informed black woman who uses her TikTok account

https://www.tiktok.com/@politicalsis?is_from_webapp=1&sender_device=pc to discuss politics and her support for her preferred political candidate. Viewers ought to follow her and listen to her views. Shout out to @politicalsis for being a vibrant, active voice about politics. Your voice matters.

3. However, shortly after posting that level of content, I began noticing that my content wasn't reaching as many people anymore⁸ and, realizing that I was being shadow banned by TikTok Inc. and ByteDance Ltd., my excitement turned to frustration. It's disheartening to feel like those companies and their platform is being unfair to me and to others in similar situations. TikTok should be a place where **everyone has an equal opportunity to be seen and heard within the guidelines for everyone**. However, due to their invidious and viewpoint discrimination, TikTok Inc. and ByteDance Ltd. do not afford every TikTok user an equal opportunity to be seen and heard.
4. On September 13, 2023, I posted a video to my TikTok account wherein the post there is language "**Meet U.S. Presidential Candidate Patrick Booker & S.C. Supreme Court Chief Justice Donald Beatty**" atop a picture of state supreme court chief justice Donald Beatty standing with me, as background song, by recording artist Kodak Black, plays "Malcom X.X.X." where he raps:

*"You'll hate to see me reach my full potential/
You want me robbing, popping dope and popping pistols/
I'm going to college because to these youngins, I'm influential/*

⁸ Despite having more than three (3) thousand followers, TikTok Inc. and ByteDance Ltd. intentionally limited the visibility of my TikTok account to only a few TikTok users.

*Thought it was Congress, they didn't know this was a Presidential/
They didn't know that I was intellectual/
You trying to change your life, but they won't let you/
I know they know I'm special, why they playing with me?"*

...

See,

https://www.tiktok.com/@kevinpresident2024/video/7278370233620942126?is_from_webapp=1&sender_device=pc&web_id=7359608146652022315

Although I paid to promote that TikTok post, TikTok Inc. and ByteDance Ltd. rejected my promotion order (Order ID 1776968900447238) and returned the funds I provided.

5. The very next day on September 14, 2023, I posted a video to my TikTok account wherein the post there is language "**I am calling on 25M Black Americans to match my 5,000 by November 5, 2024---Election Day. That's \$125 Billion Dollars. We will have enough to start our own new beginning for economic prosperity. SAVE & SHARE this reel.**" See,

https://www.tiktok.com/@kevinpresident2024/video/7277949483281894698?is_from_webapp=1&sender_device=pc&web_id=7359608146652022315
also see

https://www.tiktok.com/@kevinpresident2024/video/7278840828653587755?is_from_webapp=1&sender_device=pc&web_id=7359608146652022315

Although I paid to promote those TikTok posts, TikTok Inc. and ByteDance Ltd. rejected my promotion orders and returned the funds I provided.

6. On December 16, 2023, I posted a video to my TikTok account wherein the post there is language "**A President for All Americans**" depicting my image with a background song playing, as an *extremely familiar voice* is heard stating:

“I am announcing today my thorough consideration
and selection of the Honorable Patrick Lee Booker
as my running mate for the
2024 U.S. Presidential Election.

Patrick Lee Booker, a lot like me, have to fight government corruption and injustices in our so-called American justice system. Its broken. We know it, and Patrick knows it.

Patrick’s story is one to be listened to, absorbed, and understood. He, like many of our fellow Americans, is a direct victim of the criminal actions of some of the corrupt government actors.

But he’s strong---so strong is Patrick. He’s like an eagle! Once you get to know him. He embodies freedom and power!

Even I am moved by this young man’s story. And I believe that, because he’s been subjected to the law, Patrick knows what to be looked at, changed, and amended with our current system.

Accordingly, I hereby introduce you to the

Honorable Patrick L. Booker

whom I now proudly announce as my running mate
for President and Vice President.”

See,

https://www.tiktok.com/@kevinpresident2024/video/7313325679892860203?is_from_webapp=1&sender_device=pc&web_id=73596081466520223

15

Although I paid to promote that TikTok post, TikTok Inc. And ByteDance Ltd. rejected my promotion order and returned the funds I provided.

7. On February 1, 2024, as vice president of Expanding the Mind Magazine, LLC⁹, I posted to my TikTok account the front cover of our January 2024 “**Real Reform-Real Politics**” edition of ETM Magazine which depicts U.S. Presidential candidates Donald Trump and Joe Biden along with my image inset between those two candidates, as the *X* factor to the 2024 U.S. presidential election.¹⁰

https://www.tiktok.com/@kevinpresident2024/photo/7330708273521364266?is_from_webapp=1&sender_device=pc&web_id=7359608146652022315

Although I paid to promote that TikTok post, TikTok Inc. and ByteDance Ltd. rejected my promotion order and returned the funds I provided.

8. On February 24, 2024, I posted a video to my TikTok account wherein the post there is language “**Meet Patrick L. Booker, U.S. presidential candidate for 2024**” depicting my image. The video contains a short-clip of a black woman apparently being humorous about her take of the aesthetics of a pleasant-looking man she’s referring to in her own *previously* made video.

See

⁹ Our website is www.expandingthemindmagazine.com (which is currently undergoing redesigning and will relaunch shortly).

¹⁰ The magazine is available for purchase on Amazon.com by searching for ETM Magazine. <https://a.co/d/dYLbp6C>

https://www.tiktok.com/@kevinpresident2024/video/733925004287359722?is_from_webapp=1&sender_device=pc&web_id=7359608146652022315

Although I paid to promote that TikTok post, TikTok Inc. and ByteDance Ltd. rejected my promotion order and returned the funds I provided. This time, however, TikTok Inc. and ByteDance Ltd. were imbued with retaliatory animus and thereupon decided to place my account under *Temporary Suspension* for **ten (10) years**, until **February 24, 2034¹¹**, which is outrageously excessive for a non-offense!

<



Account temporarily suspended

Dear ETM Magazine, your account has been temporarily suspended until Feb 23, 2034 5:17 AM. You can still log into your account, but your orders will not be delivered.

Suspension reason

Reasons why your account may have been suspended:

- We received a report or complaint about your account from people on TikTok or other channels.
- There are problems with your order creative, or qualifications or services provided in your orders.
- We suspected malicious behavior or intent during order creation.
- You made changes to your order's landing page after launching the campaign.

[View more ▾](#)

Appeal

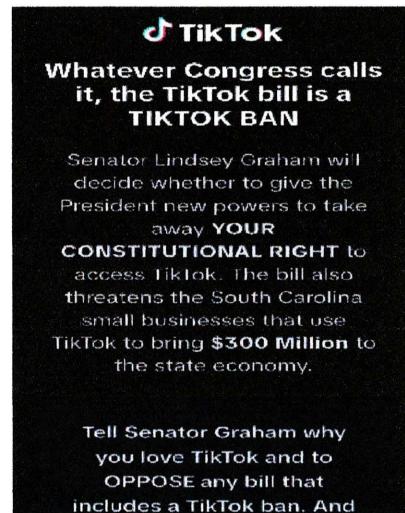
[Submit](#)

This is proof of how unjust certain American TikTok users are treated by TikTok Inc. and ByteDance Ltd. (yet this is occurring to *millions* of unjustly shadow banned American TikTok users). A ten (10) year ban¹² (from being able to fully enjoy TikTok as a user) simply because I, in my good-faith attempt to merely express myself, posted a picture of my image (and a video of another person) and sought to pay for promotion of the same. That is outrageous! That is clearly an act of First Amendment retaliation against me. See, Booker v. SCDC, 855 F.3d 533 (4th Cir. 2017) (the prohibition against First Amendment retaliation is clearly established law). **TikTok Inc.'s and ByteDance Ltd.'s counsel of record represented me in that case.**

9. On April 19, 2024, TikTok Inc. and ByteDance Ltd. contacted me via my TikTok account and asked me to call my federal senator Linsdey Graham and

¹² As Acknowledged by TikTok Inc. and ByteDance Ltd. in their petition, Americans have a protected First Amendment right to access and to use TikTok. Therefore, being that persons enjoy a constitutional right (civil right) to access and use TikTok, TikTok Inc. and ByteDance Ltd. need to take heed to this: "**Deprivation or suspension of any civil rights for past conduct is punishment for such conduct.**" Cummings v. Missouri, 71 U.S. 277 (1867). Although my conduct in posting the video to my TikTok account on February 24, 2024, was completely within the rules and regulations of TikTok, the deprivation or suspension of my First Amendment rights (relating to my ability to fully use and enjoy my TikTok account) was punishment by TikTok Inc. and ByteDance Ltd. against me for my mere exercise of my First Amendment rights. That is oppression! The intentional suppression of civil rights is oppression! This causes mental anguish and depression against American TikTok users by TikTok Inc. and ByteDance Ltd.

to tell Senator Graham that I love TikTok and that I oppose any bill that



includes a TikTok ban.

10. Being that TikTok Inc. and Bytedance Ltd. have shadow-banned my **KevinPresident2024/ETM Magazine TikTok account, along with 70M others, and even has my account under a current 10-year temporary suspension¹³ from being able to promote any of my posts,** I found it ironic that TikTok Inc. and ByteDance Ltd. would reach out to me for help---the very American citizen whom they have wronged via *invidious, viewpoint discrimination and First Amendment retaliation*).

I decided to use it as an opportunity to sound the alarm—about the widespread civil rights violations committed against millions of Americans

¹³ The “**temporary ban**” placed on my account by TikTok Inc. and ByteDance Ltd. is set to expire on February 24, 2034, a ten (10) year ban placed on my account by TikTok Inc. and ByteDance Ltd. as a result of my request to promote my TikTok post on February 24, 2024. See Video Post https://www.tiktok.com/@kevinpresident2024/video/7339250042873597227?is_from_webapp=1&sender_device=pc&web_id=7359608146652022315 I am not sure how TikTok Inc. and ByteDance may seek to justify their arbitrary and capricious actions.

citizens who are unlawfully shadow-banned by TikTok Inc. and ByteDance Ltd.—by calling my federal senator and requesting for an investigation by the Civil Rights Division of the United States Department of Justice.

11. That same day I called Senator Graham’s office, and I recorded the call. I informed his staffer (Mr. Phillip) about the massive unjust shadow bans TikTok Inc. and ByteDance Ltd. have subjected millions of TikTok users to because of invidious and viewpoint discrimination against certain (Black) TikTok users, and that I was requesting Senator Graham to refer the matter to the civil rights division of the Justice Department for investigation. Mr. Phillip promised to notify Senator Graham. **See, TikTok Asked Me for Help**

<https://youtu.be/a92bIhOCmqw?si=I9SXqXPAhESTTrJC> .

Prior to being unjustly shadow banned by TikTok Inc. and ByteDance Ltd., I was able to gain more than three (3) thousand TikTok users as followers of my KevinPresident2024/ETM Magazine TikTok account. Having 3K followers should allow my posts to garner at least 3K views—not 8 views. That is *prima facie* evidence of a shadow ban on my account. TikTok Inc. and ByteDance Ltd. and/or some of their “thousands of employees in the United States” are clearly subjecting me, along with 70M others, to invidious, viewpoint discrimination and retaliation.

As I did when I called on my federal senator to take action, I am hereby asking the U.S. Attorney General, Hon. Merrick B. Garland, to task his civil rights

enforcement division to initiate a robust labyrinth federal investigation of whether TikTok Inc. and ByteDance Ltd. are, in fact, responsible for mass civil rights violations of American citizens by and through their invidious, viewpoint discrimination and First Amendment retaliation against certain American citizens who use their platform, and if so, to sue TikTok Inc. and ByteDance Ltd. for the same.

I am nacho average¹⁴ *TikTok* user: *unlike* the millions of other *TikTok* users, I post engaging, entertaining, informative, **political content** that would propel and catapult my interest in the American presidency to the attention of the world, as I am the X factor to the 2024 United States Presidential Election.

Certain employees within TikTok Inc. and ByteDance Ltd. are aware of the this and, because of my race and skin color, *coupled with my level of political debate/discussion*, they have conspired to deprive me of my secured rights under the First Amendment and they have subjected my *TikTok* account to unjust marginalization, relegated to the fringes of their social media platform, in order to hinder, obstruct, and impede me from achieving internet stardom on its platform.

¹⁴ Indeed, I am nacho average individual; I am ra raavis and sui generis with great skill at presenting positions in court. See, e.g., *Booker v. Toal et al.*, 3:23-CV-06187-DCC-MGB (Doc. 14 ***Motion to Alter or Amend Judgment***); *Booker v. Merchant*, 2:22-cv-02179-JDA-MGB (Doc. 105 ***Sur-reply***); most importantly, see *State of South Carolina v. Patrick Lee Booker*, Appellate Case No. 2022-000641 (I perfected my appeal *pro se*, and I am going to obtain relief. It is currently pending in the S.C. Court of Appeals).

But for TikTok Inc.'s and ByteDance Ltd.'s invidious/viewpoint discrimination and First Amendment retaliation against me and my **KevinPresident2024/ETM Magazine TikTok account**, I would have by now amassed millions of followers/potential voters preceding this presidential election cycle based upon how social media metrics work. For example, the 59 second reel of my wife and I **depicted as the President and First Lady of the new United States** which I posted to my TikTok account on September 23, 2023, would have (and should have) gone viral and created for us internet stardom, if no intentional interference by TikTok Inc. and ByteDance Ltd.

See,

https://www.tiktok.com/@kevinpresident2024/video/7281984414765141290?is_from_webapp=1&sender_device=pc&web_id=7359608146652022315

To be sure, I published a message in our February 2024 "**Black History Month & Valentine's Day**" special edition ETM Magazine which I directed to the attention of U.S. presidential candidate Donald J. Trump. Go to Amazon.com and search for "**ETM Black history**" or click <https://a.co/d/00CAWRa>. I posted a picture of the cover of that magazine to my TikTok account and paid to promote the video. See https://www.tiktok.com/@kevinpresident2024/video/7341033144142826794?is_from_webapp=1&sender_device=pc&web_id=7359608146652022315.

Although I paid to promote that TikTok post, TikTok Inc. and ByteDance Ltd. rejected my promotion order and returned the funds I provided. Because of their

unjust shadow ban and discrimination/retaliation against me, that TikTok post have only been seen by 60 TikTok users, despite the account having more than three (3) thousand followers. The math is not mathing! And it is directly linked to the unjust and unlawful acts and omissions of TikTok Inc. ByteDance Ltd. Therefore, TikTok Inc. and ByteDance Ltd. hands are *unclean* and they are therefore prevented from coming before this Court of justice asserting First Amendment rights (as a TikTok user¹⁵) when and where, as shown above, I can point directly to their wrongdoing in violating First Amendment rights themselves.



Because TikTok Inc.'s and ByteDance Ltd.'s lawyers previously represented me and helped me achieve a legal victory in the United States Court of Appeals¹⁶, and

¹⁵ ATTENTION TO ALL ATTORNEYS: TikTok Inc. and ByteDance Ltd. have acknowledged, via their petition, that American TikTok users **have First Amendment rights to access their platform and** while using their platform.

¹⁶ The petitioners' attorney David M. Zions of COVINGTON & BURLING LLP, One CityCenter, in Washington, D.C., is my former attorney. See, Booker v. SCDC 855 F.3d 533 (4th Cir. 2017). Mr. Zions and I enjoyed a pleasant attorney-client relationship which I trust will be remembered and provide for a good anticipation of a future discussion of resolving these issues.

likewise helped me preserve that legal victory in the United States Supreme Court¹⁷, I encourage them to contact me and discuss a fair resolution of these issues with my TikTok account.

WHEREFORE, having made the foregoing motion, I respectfully request that this Court permit me to intervene in this matter for the limited purpose of appearing alongside the Honorable Merrick B. Garland, *U.S. Attorney General*, as *next of friend* in defense of the 70M (of the 170M American TikTok users) who were, and who are being, subjected to invidious and view-point discrimination/First Amendment retaliation by TikTok Inc. and ByteDance Ltd.

Cordially,

May 18, 2024



The Honorable Patrick L. Booker, *U.S. Advocate of Justice & Legal Strategist*
103 Rock Knoll Drive
Greenwood, South Carolina 29649
(864) 526-8981
patrickbooker85@gmail.com

¹⁷ Same thing for our Supreme Court case.

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

BRIAN FIREBAUGH, ET AL.,)
)
)
Petitioners,)
v.) No. 24-1130
)
)
MERRICK B. GARLAND, in his official)
Capacity as Attorney General of the)
United States,)
 Respondent.)
)

)

CERTIFICATE OF SERVICE

I, Patrick L. Booker, do hereby certify that I have this date served a copy of the Motion to Intervene upon all parties entitled to such service by depositing in the U.S. Mail, postage prepaid, addressed as follows:

By certified mail, postage prepaid: Merrick B. Garland Attorney General of the United States U.S. Department of Justice 950 Pennsylvania Avenue, NW Washington, DC 20530

By certified mail, postage prepaid: Matthew M. Graves United States Attorney 601 D Street, NW Washington, DC 2057 Counsel for Respondents

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Counsel for Petitioners

May 20, 2024

Patrick L. Booker

Signature

TO

The Hon. Mark Langer, Clerk of Court
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